

LABOR CABINET
Department of Workers' Claims
(New Administrative Regulation)

**803 KAR 25:008. Procedure for adjustments of claims using
Litigation Management Systems.**

RELATES TO: KRS 342.0011, 342.125, 342.260, 342.265, 342.270, 342.300, 342.310, 342.315, 342.710, 342.715, 342.732, 342.760

STATUTORY AUTHORITY: KRS 342.033, 342.260(1), 342.270(3), 342.285(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260(1) requires the commissioner to promulgate administrative regulations necessary to implement the provisions of KRS Chapter 342. KRS 342.270(3) requires the commissioner to promulgate an administrative regulation establishing procedures for the resolution of claims. KRS 342.033 requires the commissioner to prescribe the format and content of written medical reports. KRS 342.285(1) requires the commissioner to promulgate an administrative regulation governing appeals to the Workers' Compensation Board. This administrative regulation establishes the procedure for the resolution of claims before an administrative law judge or Workers' Compensation Board.

Section 1. Definitions. (1) "Administrative law judge" or "ALJ" means an individual appointed pursuant to KRS 342.230(3).

(2) "Board" is defined by KRS 342.0011(10).

(3) "BRC" means Benefit Review Conference.

(4) "Civil rule" or "CR" means the Kentucky Rules of Civil Procedure.

(5) "Claim" means any claim including injury, hearing loss, or occupational disease.

(6) "Commissioner" is defined by KRS 342.0011(9).

(7) "Date of entry" means the date an order or opinion is filed.

(8) "Date of filing" means the date that a pleading, motion, or other document is filed with the commissioner at the Department of Workers' Claims in Frankfort, Kentucky.

(9) "Employer" means individuals, partnerships, voluntary associations, and corporations.

(10) "Employer who has not secured payment of compensation" means any employer who employs an employee as defined by KRS 342.640 but has not complied with KRS 342.340.

(11) "Litigation Management System" or "LMS" means the electronic filing system utilized in the filing and processing of workers' compensation claims in the Commonwealth of Kentucky.

(12) "Local time" means the official time utilized in Kentucky at the time of filing and is limited to the Eastern and Central time zones.

(13) "Signature" means actual personal signatures, and incorporates electronic signatures which shall be treated as personal signatures for purposes of CR 11.

(14) "Special defenses" means defenses raised by special answer filed in accordance with Section 7(2)(d) of this administrative regulation.

Section 2. Date of Filing. (1) The date of filing shall be:

(a) For a paper pleading, motion, or other document transmitted by United States registered (not certified) or express mail, or by other recognized mail carrier, the date the transmitting agency receives the paper pleading, motion, or document from the sender as noted by the transmitting agency on the outside of the container used for transmitting, within the time allowed for filing;

(b) The following business day for a paper pleading, motion, or document delivered to the Department of Workers' Claims after the department is closed at 4:30 p.m., local time, or on the weekend; or

(c) The date an electronic pleading, motion, or document submitted by the Litigation Management System is filed with the commissioner at the Department of Workers' Claims in Frankfort, Kentucky.

1. An electronic pleading, motion, or document shall be considered filed on completion of filing.

2. The filing party shall receive an electronic notification of the date and time of filing.

3. Electronic filings may be made through LMS only for the periods 6:00 a.m. (local time) through 10:00 p.m. (local time), Monday through Friday, and from 6:00 a.m. (local time) through 5:00 p.m. (local time) Saturday. All other times shall be reserved for system maintenance and LMS filings shall not be accepted during those times.

(2) Effective January 1, 2017, paper or written pleadings, motions, and documents shall not be accepted for filing.

(3) All pleadings, notices, orders, and other documents pertaining to a claim for workers' compensation benefits shall be filed utilizing only the LMS as of January 1, 2017.

(4) Filings may be made electronically utilizing LMS beginning March 1, 2016.

Section 3. Parties. (1) The injured party, or survivors, shall be designated as plaintiff. Adverse parties shall be designated as defendants.

(2) All persons shall be joined as plaintiffs in whom any right to any relief pursuant to KRS Chapter 342, arising out of the same transaction and occurrence, is alleged to exist. If a person refuses to join as a plaintiff, he or she shall be joined as a defendant, and the fact of refusal to join as a plaintiff shall be pleaded.

(3)(a) All persons shall be joined as defendants against whom the ultimate right to relief pursuant to KRS Chapter 342 may exist, whether jointly, severally, or in the alternative. An ALJ shall order, upon a proper showing, a party be joined or dismissed.

(b) Joinder shall be sought by motion as soon as practicable after legal grounds for joinder are known. Notice of joinder and a copy of the claim file shall be served in the manner ordered by the administrative law judge.

Section 4. LMS filings. (1) Pleadings, motions, and documents filed electronically shall bear the electronic signature of the filer. The electronic signature shall constitute a signature for purposes of CR 11, for all other purposes of the Civil Rules, and any other purpose for a signature required by this administrative regulation.

(2) An electronic signature shall include, if applicable:

(a) A signature block containing the name, mailing address, phone number, fax number, and email address of the filer; and

(b) The name of the filer preceded by "/s/" typed on the space where signature otherwise would appear.

(3) Affidavits and exhibits to pleadings containing original handwritten signatures shall be scanned and filed electronically in PDF or PDF/A format.

(4) Documents which require the signatures of multiple persons may be filed electronically by:

(a) Indicating the consent of the non-filing party or person by inserting the typed signature of the person or party, preceded by "/s/" and followed by "by permission" (e.g. "/s/ Jane Doe by permission"); or

(b) Filing electronically a scanned document containing all signatures.

(5) The commissioner, an ALJ, board member, or designee of the commissioner may sign electronically any document requiring a signature. The electronic signature shall satisfy the requirements of CR 11, all other Kentucky Rules of Civil Procedure, or any other purpose required by this administrative regulation.

(6) A signature on any document required to be notarized, acknowledged, verified, or made under oath shall be handwritten and then scanned into LMS for electronic filing. The scanned document shall be the official record. The filing party shall retain the original executed document. The original executed document shall be produced if the validity or authenticity of the signature is challenged.

(7)(a) A non-filing signatory or party may challenge the validity or authenticity of an electronically filed document containing a non-attorney signature or multiple signatures by filing an objection within fourteen (14) days of service of the document. The filer of the document objected to shall bear the burden to prove validity or authenticity and shall respond to the objection within ten (10) days after service of the objection. Failure to respond shall result in the challenged document being stricken from the record.

(b) If the fourteen (14) day period has passed for filing a motion to seek a ruling, the objecting party shall show good cause for the delayed challenge. If the motion to seek a ruling is granted, the filer

shall bear the burden to prove authenticity and file a response within ten (10) days of the ALJ's ruling to allow a challenge. Failure to respond or to prove authenticity shall result in the filing being stricken from the record.

(8) Electronically filed documents shall be recorded as filed as of the local time where the document is transmitted. Filings made from time zones other than the Eastern and Central time zones shall be considered filed in the Central time zone.

Section 5. Pleadings. (1) An application for resolution of claim and all other pleadings shall be signed or electronically signed when using LMS, and submitted in accordance with this administrative regulation.

(a) For all claims, an applicant shall submit a completed Application for Resolution of Claim. If the claim involves a fatality, the applicant shall also submit a Form F within fifteen (15) days of the application.

(b) The applicant may include, if appropriate, a request for vocational rehabilitation, a request for mediation, interlocutory relief, or a request for imposition of a safety penalty pursuant to KRS 342.165. The applicant shall also designate whether an interpreter shall be required at the hearing, and shall specify the language and any specific dialect needed. A request for vocational rehabilitation benefits shall include a statement of why the relief is requested, and the basis of the request. If mediation is requested, the applicant shall designate whether a private mediator is to be used, or whether mediation services are requested to be provided by the DWC. A request for interlocutory relief shall provide the items set forth in Section 11 of this administrative regulation.

(2) The filing of an application and service through LMS shall satisfy all requirements for service pursuant to CR 5. All pleadings filed in the LMS shall be served upon all other parties electronically or by e-mail. If a party is represented, the pleading shall be served on that representative, at the party's or representative's last known e-mail address. A certificate of service indicating the date of service and electronically signed by the party shall appear on the face of the pleading. The party or its representative shall include his or her name, full address, phone number, and e-mail address. Notices of deposition, notices of physical examination, requests for and responses to requests for production of documents, and exchange of reports or records shall be served by e-mail upon the parties and shall not be filed with the commissioner.

(3) If filed outside of LMS, the requirements of this subsection shall apply.

(a) An application for resolution of claim shall be filed with sufficient copies for service on all parties. The commissioner shall make service by first class mail.

(b) The original of all pleadings shall be filed with the commissioner and shall be served upon all other parties by mailing a copy to the other parties or, if represented, to that representative, at the party's or representative's last known address. The parties, by agreement, may serve all pleadings upon each other by electronic means. A certificate of service indicating the method and date of service and signed by the party shall appear on the face of the pleading. The party or its representative shall include his or her name, full address, phone number, and e-mail address. Notices of deposition, notices of physical examination, requests for and responses to requests for production of documents, and exchange of reports or records shall be served upon the parties and shall not be filed with the commissioner.

(4) After the application for resolution has been assigned to an ALJ, subsequent pleadings shall include, within the style of the claim and immediately before the claim number, "Before Administrative Law Judge (name)". Upon consolidation of claims, the most recent claim number shall be listed first.

(5) All documents in an appeal to the board shall include the language "Before Workers' Compensation Board" before the claim number within the style of the claim.

Section 6. Motions. (1) The party filing a motion may file a brief memorandum supporting the motion and opposing parties may file brief memoranda in reply. Further memoranda (for example, reply to response) shall not be submitted.

(2) Every motion and response, the grounds of which depend

upon the existence of facts not in evidence, shall be supported by affidavits demonstrating the facts.

(3) Every motion, the grounds of which depend upon the existence of facts which the moving party believes are shown in the evidence or are admitted by the pleadings, shall make reference to the place in the record where that evidence or admission is found.

(4) A response to a motion, other than to reopen pursuant to KRS 342.125 or for interlocutory relief, shall be filed within ten (10) days after the date of filing of a motion. The ALJ shall rule on the motion no later than ten (10) days after the date for the filing of the response has passed.

(5)(a) A motion to reopen shall be accompanied by as many of the following items as may be applicable:

1. A current medical release Form 106 executed by the plaintiff;

2. An affidavit or verification evidencing the grounds to support reopening;

3. A current medical report showing a change in disability established by objective medical findings;

4. A copy of the opinion and award, settlement, voluntary agreed order, or agreed resolution sought to be reopened;

5. An affidavit or verification certifying a previous motion to reopen for permanent income benefits has not been made by the moving party, or if one (1) has previously been made, the date on which the previous motion was filed;

6. A designation of evidence from the original record specifically identifying the relevant items of proof which are to be considered as part of the record during reopening. A designation of evidence made by a party shall list only those items of evidence from the original record relevant to the matters raised on reopening. The burden of completeness of the record shall rest with the parties to include so much of the original record, up to and including the award or order on reopening, as is necessary to permit the ALJ to compare the relevant evidence existing in the original record with all subsequent evidence submitted by the parties. Except for good cause shown at the time of the filing of the designation of evidence, a party shall not designate the entire original record from the claim for which reopening is being sought; or

7. A certification that the motion to reopen was served on all parties as well as the counsel who last represented the parties.

(b)1. Any response to the motion to reopen shall be filed within twenty (20) days of the filing of the motion to reopen.

2. A response may contain a designation of evidence specifically identifying evidence from the original record not already listed by the moving party relevant to matters raised in a response.

3. The ALJ shall rule on the motion no later than twenty (20) days after the date for the filing of the response has passed.

(6) A motion for allowance of a plaintiff's attorney fee shall:

(a) Be made within thirty (30) days following the finality of the award, settlement, or agreed resolution upon which the fee request is based;

(b) Be served upon the adverse parties and the attorney's client;

(c) Set forth the fee requested and mathematical computations establishing that the request is within the limits set forth in KRS 342.320; and

(d) Be accompanied by:

1. An affidavit or verification of counsel detailing the extent of the services rendered and the time expended;

2. A signed and dated attorney fee election form required by KRS 342.320(5), as submitted in accordance with Section 7(1)(f) of this administrative regulation; and

3. A copy of the signed and dated contingency fee contract, if requesting an attorney fee based upon recovery of income benefits on behalf of an employee, as submitted in accordance with Section 7(1)(g) of this administrative regulation.

(7) A motion for allowance of defendant's attorney's fee shall be:

(a) Filed within thirty (30) days following the finality of the decision; and

(b) Accompanied by an affidavit or verification of counsel detailing:

1. The extent of the services rendered and the time expended; and

2. The total amount to be charged.

(8) Vocational rehabilitation benefits may be requested in the initial claim filing, subsequently by motion, or ordered by the ALJ in

his or her discretion.

(9) If a plaintiff dies subsequent to an award, a Motion to Substitute Party and Continue Benefits shall be filed.

Section 7. Application for Resolution of a Claim and Response.

(1) The applicant shall file an application for resolution of a claim. At the time of or within fifteen (15) days after the filing of the application, the following shall be filed:

(a) Work history, to include all past jobs performed on a full or part-time basis within twenty (20) years preceding the date of injury;

(b) Medical history, to include all physicians, chiropractors, osteopaths, psychiatrists, psychologists, and all other medical providers or treatment facilities, where the individual has been seen or admitted in the preceding fifteen (15) years and including beyond that date any physicians or hospitals regarding treatment for the same body part, or condition for which benefits are claimed;

(c) Medical release (Form 106);

(d) One (1) medical report, which may consist of legible, handwritten notes of the treating physician, and which shall include the following:

1. A description of the injury or condition which is the basis of the claim;

2. A medical opinion establishing a causal relationship between the work-related events or the medical condition which is the subject of the claim; and

3. An opinion from a mental health professional establishing a mental impairment or disorder if a work-related psychological condition is claimed;

(e) Documentation establishing additional periods for which temporary total disability benefits are sought;

(f) The attorney fee election form;

(g) A copy of the contingency fee contract; and

(h) A completed Form SVC, with supporting documentation attached if a claimant has alleged the employer committed a safety violation pursuant to KRS 342.165.

(2)(a) Following the filing of an application for resolution of claim, or the sustaining of a motion to reopen, the commissioner shall issue a notice of filing and scheduling order for a BRC and hearing, to be conducted by an ALJ. Within forty-five (45) days of the date of the notice of filing and scheduling order for a benefit review conference, each defendant shall file a Notice of Claim Denial or Acceptance. However, no Notice of Claim Denial shall be required to be filed by any party in a claim reopened pursuant to KRS 342.125.

(b) If a Notice of Claim Denial or Acceptance is not filed, all allegations set forth in the application shall be deemed admitted.

(c) The Notice of Claim Denial or Acceptance shall set forth whether the claim is admitted, denied in whole, or denied in part.

(d) In the Notice of Claim Denial or Acceptance, a defendant shall, if appropriate, file a special answer to raise any special defenses designated in accordance with this paragraph. If a defendant raises a special defense under KRS 342.165, failure to comply with safety laws, defendant shall also submit a completed Form SVE with the special answer, and copies of any safety regulations or rules supporting the allegation.

1. A special answer shall be filed within:

a. Forty-five (45) days after the issuance of the order scheduling a benefit review conference and hearing;

b. Forty-five (45) days after the date of an order joining a defendant as a party, if joinder occurs after the filing of the application for the resolution of the claim; or

c. Ten (10) days of the discovery of facts supporting the defense upon a showing discovery could not have been made earlier in the exercise of due diligence.

2. A special defense shall be waived if not timely raised.

3. A special defense shall be pled if the defense arises under:

a. KRS 342.035(3), unreasonable failure to follow medical advice;

b. KRS 342.165, safety violation;

c. KRS 342.316(7) or 342.335, false statement on employment application;

d. KRS 342.395, voluntary rejection of KRS Chapter 342;

e. KRS 342.610(3), voluntary intoxication or self-infliction of injury;

f. KRS 342.710(5), refusal to accept rehabilitation services;
g. Running of periods of limitations or repose under KRS 342.185, 342.270, 342.316, or other applicable statute; or
h. An allegation that the injury allegedly resulted from horseplay.
(e) Within sixty (60) days of the issuance of the notice of filing and scheduling order for a BRC and hearing, the parties shall file a notice of disclosure.

1. The notice of disclosure shall contain:

a. The names of all known witnesses upon whom the party intends to rely; and

b. A statement by plaintiff of wage information for all wages earned, if any, subsequent to the injury. The statement shall include any wages earned as of the date of service of the notice of disclosure while employed for any employer other than the one (1) for whom he or she was employed at the time of the injury. Plaintiff shall list the name of the employer, address, dates of any subsequent employment, the nature of the employment, and a description of the physical requirements of the subsequent employment.

2. Plaintiff shall also provide wage information for all wages earned for any concurrent employment for which he or she was engaged at the time of the injury on a Form AWW-CON.

3. All parties shall file a list of all known and anticipated contested issues. The list of contested issues shall be completed with specificity. Subsequent additional contested issues shall only be allowed upon motion to the ALJ establishing good cause as to why the issue could not have been listed earlier. Alleging an injury or occupational disease or listing a contested issue without reasonable ground shall constitute grounds for the imposition of sanctions under Section 25 of this administrative regulation.

4. Plaintiff shall disclose all known unpaid medical bills to the parties, including travel for medical treatment, co-pays, or direct payments by plaintiff for medical expenses for which plaintiff seeks payment or reimbursement. Actual copies of the bills and requests for reimbursement shall not be filed but shall be served upon opposing parties if requested.

5. Defendant shall provide with its notice of disclosure a completed Form AWW-1, average weekly wage certification, an itemization of any medical bills or medical expenses known to be disputed by defendant, any submitted bills being considered but unpaid, and a total for all medical expenses paid as of the date application for resolution of the claim or motion to reopen is filed. If the plaintiff has earned wages for defendant after the injury which are the subject of the litigation, defendant shall provide post-injury wage information on a Form AWW-POST. In a reopened claim, a Form AWW-1 shall not be required to be filed if an ALJ made a finding establishing the average weekly wage in a previous decision or if the pre-injury average weekly wage was previously stipulated by the parties unless a party seeks and is relieved from the original stipulation.

6. Within forty-five (45) days of the date of the order joining a new party, the newly joined party shall file a notice of disclosure in accordance with the requirements of this paragraph. A medical provider joined because treatment or bills have been contested shall not be required to file a disclosure under this paragraph.

7. All parties shall amend the notice of disclosure within ten (10) days after identification of any additional witness, or receipt of information or documents which should have been disclosed had it then been known or available at the time of the original filing. Failure to comply shall result in the exclusion of the witness or documents.

Section 8. Discovery, Evidence, and Exchange of Records. (1) Proof taking and discovery for all parties shall begin from the date the application is filed.

(2)(a) Plaintiff and defendants shall take proof for a period of sixty (60) days from the date of the issuance by the commissioner of the notice of filing and order scheduling the BRC and hearing.

(b) After the sixty (60) day period, defendants may take proof for an additional sixty (60) days.

(c) After the defendant's sixty (60) day period, the plaintiff may take rebuttal proof for an additional thirty (30) days.

(3) During the pendency of a claim, any party obtaining or possessing a medical or vocational report or records and relevant portions of hospital, educational, Office of Vital Statistics, Armed Forces, Social Security, other public records and surveillance reports or videos, or recorded statements shall serve a copy of the report or

records upon all other parties within ten (10) days following receipt of those reports or records or within ten (10) days of receipt of notice if assigned to an ALJ. Upon request, plaintiff shall provide each defendant with a fully executed Social Security Release Form, Form 115, or a fully executed release to provide the full information from which any documents listed in this subsection are filed. Failure to comply with this section may constitute grounds for exclusion of the reports or records as evidence and shall constitute grounds for the imposition of sanctions pursuant to Section 25 of this administrative regulation.

(4) More than two (2) medical reports filed with the application for resolution of claim shall not be admitted into evidence without further order if:

(a) No objection is filed prior to or with the filing of the Notice of the Claim Acceptance or Denial; and

(b) The medical reports comply with Section 10 of this administrative regulation.

Section 9. Vocational Reports. (1) One (1) vocational report may be filed by a party by notice and shall be admitted into evidence without further order and without the necessity of a deposition, if no objection is filed.

(2) Vocational reports shall be signed by the individual making the report.

(3) Vocational reports shall include, within the body of the report or as an attachment, a statement of the qualifications of the person making the report.

(4) An objection to the filing of a vocational report shall:

(a) Be filed within ten (10) days of the filing of the notice or motion for admission; and

(b) State the grounds for the objection with particularity.

(5) The filing party shall be granted ten (10) days to respond to any objection to the filing of the report.

(6) The ALJ shall rule on the objection no later than ten (10) days after the time to respond has passed.

(7) If a vocational report is admitted as direct testimony, an adverse party may depose the reporting vocational witness in a timely manner as if on cross-examination at its own expense. Notice of time, date, and place for cross-examination shall be given within fifteen (15) days of the date the evidence to be cross-examined is served on the cross-examining party.

Section 10. Medical Reports. (1) A party shall not introduce direct testimony from more than two (2) physicians except upon a showing of good cause and prior approval by an administrative law judge.

(2) Medical reports shall be submitted through the LMS utilizing the appropriate form, except an ALJ may permit the introduction of other reports which substantially comply with the requirements set forth above, which are not in excess of twenty-five (25) pages.

(3) Medical reports shall be signed by the physician making the report, or be accompanied by an affidavit from the physician or verification from the submitting party or representative verifying the authenticity of the report.

(4) Medical reports shall include a statement of qualifications of the person making the report. If the qualifications of the physician who prepared the written medical report have been filed with the commissioner and the physician has been assigned a medical qualifications index number, reference may be made to the physician's index number and a listing of his or her medical specialty in lieu of attaching qualifications.

(5) Narratives in medical records or reports shall be typewritten or clearly legible. Other portions, including spirometric tracings, shall be clearly legible.

(6) Notices of filing or motions to file medical reports shall list the impairment rating assigned in the medical report or record in the body of the notice or motion.

(7)(a) Medical evidence may be introduced by deposition, medical report, or compliant medical records as set forth below which shall be admitted into evidence without further order if an objection is not filed.

(b) An objection to the filing of a medical report or records shall be filed within ten (10) days of the filing of the notice or the motion for admission.

(c) Grounds for the objection shall be stated with particularity.

(d) The ALJ shall rule on the objection no later than ten (10) days after the time to respond has passed.

(8) Medical records which are not submitted on the appropriate form, or format designated by the commissioner, may be submitted by notice which identifies the records, the person or medical facility which produced the records, and the relevance of the records to the claim. Records submitted in excess of ten (10) pages shall be paginated or Bates stamped consecutively and indexed with a table of contents generally identifying the contents of each page. Failure to comply with pagination and table of contents shall result in rejection of the records which shall not be filed or considered as evidence.

(9) If a medical report or medical record is admitted as direct testimony, an adverse party may depose the reporting or treating physician in a timely manner as if on cross-examination at its own expense, subject to the proof time limitations set forth above. Notice of the time, date, and place for cross-examination shall be given within fifteen (15) days of the date the evidence is filed.

Section 11. Medical Evaluations Pursuant to KRS 342.315 or KRS 342.316. (1) All persons claiming benefits for hearing loss or occupational disease shall be referred by the commissioner for a medical evaluation in accordance with contracts entered into between the commissioner and the University of Kentucky and University of Louisville medical schools, or other facility designated by the commissioner.

(2) An ALJ may direct appointment by the commissioner of an evaluator pursuant to subsection (1) of this section.

(3) Upon referral for medical evaluation under this section, a party may tender additional relevant medical treatment records and diagnostic studies to the ALJ or the commissioner for determination of relevancy and submission to the evaluator. The ALJ or commissioner shall provide notice to the parties of the material submitted to the medical evaluator. This additional information shall not be considered filed of record. The information shall be submitted to the medical scheduler at the Department of Workers' Claims within fourteen (14) days following an order for medical evaluation pursuant to KRS 342.315, and shall be in chronological order and provided to all other parties within ten (10) days following receipt of the medical information. A party shall not send records or propound questions directly to the medical evaluator.

(4) Upon the scheduling of an evaluation, the commissioner shall provide notice to all parties. The employer, carrier, or Uninsured Employers' Fund shall forward to the plaintiff necessary travel expenses as required by KRS 342.315(4). Upon completion of the evaluation, the commissioner shall provide copies of the report to all parties and shall file the original report in the claim record to be considered as evidence.

(5) The ALJ shall allow timely cross-examination of a medical evaluator appointed by the commissioner at the expense of the moving party.

(6) Failure by the plaintiff to attend the scheduled medical evaluation may be grounds for dismissal, forfeiture of benefits during the period in which the plaintiff fails to attend, payment of a no-show fee, sanctions, or all of the items listed in this subsection.

(7) Failure by the employer or its insurance carrier to pay travel expenses within seven (7) days of notification of a scheduled medical evaluation or to pay the cost of the examination within thirty (30) days of the receipt of a statement for the evaluation shall be grounds for imposition of sanctions pursuant to Section 25 of this administrative regulation, KRS 342.310, or as an unfair claims settlement practice.

Section 12. Interlocutory Relief. (1) A party may seek interlocutory relief at the time of the initial claim application or by motion requesting:

(a) Interim payment of income benefits for total disability pursuant to KRS 342.730(1)(a);

(b) Medical benefits pursuant to KRS 342.020; or

(c) Rehabilitation services pursuant to KRS 342.710.

(2) If interlocutory relief is requested prior to or at the time the application for resolution of claim is filed, the commissioner shall issue an order allowing the responding party twenty (20) days to respond to the request.

(3)(a) Upon receipt of a response to request for interlocutory relief, the commissioner shall assign the claim to an ALJ for resolution of the request for interlocutory relief.

(b) The ALJ to whom the interlocutory relief request is assigned may schedule a hearing to be held within thirty-five (35) days of the order assigning the claim for resolution.

(c) The ALJ shall issue a decision regarding interlocutory relief within twenty (20) days after the date of the hearing.

(4) If no hearing for interlocutory relief is held, the ALJ shall issue a decision within twenty (20) days after the date the response is due, or twenty (20) days after the date the response is filed.

(5) If the request for interlocutory relief is denied, the claim shall be referred to the commissioner for assignment of the claim for resolution by an ALJ.

(6) If the request for interlocutory relief is granted, the claim shall be placed in abeyance. The plaintiff shall provide a status report every sixty (60) days, or sooner if circumstances warrant or upon order by the ALJ, updating his or her current status. Failure to provide status reports shall be grounds for termination of interlocutory relief. Upon motion and a showing of cause, or upon the ALJ's own motion, interlocutory relief shall be terminated and the claim removed from abeyance. The order terminating interlocutory relief shall also contain a provision for referral to the commissioner for assignment of the claim for resolution by an ALJ.

(7) If a motion for interlocutory relief is filed after the claim is assigned to an ALJ, the ALJ shall within ten (10) days issue an order:

(a) Requiring a response to the request for interlocutory relief be served within twenty (20) days from the date of the order, and refer it to the commissioner for assignment to an ALJ for the sole purpose of considering the request for interlocutory relief; and

(b) If necessary, setting a hearing within thirty-five (35) days of the order. The hearing may be held electronically if the parties agree or a party demonstrates good cause as to why the party cannot appear at the hearing in person. The hearing may be waived by agreement.

(8)(a) Upon completion of the hearing, an ALJ shall issue a decision within twenty (20) days; or

(b) If the hearing is waived, an ALJ shall issue a decision within twenty (20) days after the date of agreed waiver.

(9) Entitlement to interlocutory relief shall be established by affidavit, deposition, hearing testimony, or other means of record demonstrating the requesting party:

(a) Is eligible under KRS Chapter 342;

(b) Shall suffer immediate and irreparable injury, loss, or damage pending a final decision on the application; and

(c) Is likely to succeed on the merits based upon the evidence introduced by the parties.

(10) Rehabilitation services may be ordered while the claim is pending upon a showing that immediate provision of services shall substantially increase the probability that the plaintiff shall return to work.

(11) If interlocutory relief is awarded in the form of income benefits, the claim shall be placed into abeyance unless a party shows irreparable harm shall result. Plaintiff shall file reports every sixty (60) days, or sooner if circumstances warrant, or upon order by the administrative law judge, updating his or her current status. Upon motion and a showing of cause, or upon the administrative law judge's own motion, interlocutory relief shall be terminated and the claim removed from abeyance. Failure to file a timely status report shall constitute cause to terminate interlocutory relief.

(12) Benefits awarded pursuant to an interlocutory order shall not be terminated except upon entry of an order issued by an administrative law judge. Failure to pay benefits under an interlocutory order or termination of benefits ordered pursuant to an interlocutory order without prior approval of the ALJ shall constitute grounds for a violation of the Unfair Claims Settlement Practices Act, and for sanctions pursuant to Section 26 of this administrative regulation.

(13) If a claimant is successful in the request for interlocutory relief and, if payment of benefits pursuant to the interlocutory relief order results in an overpayment of benefits, the party making the overpayment shall be entitled to a dollar for dollar credit for the overpayment against past due or future awarded income benefits.

(14) If interlocutory relief is requested in the application for benefits, an assignment to an ALJ shall not be made on other issues

and a scheduling order shall not be issued until a ruling has been made on the interlocutory relief request, unless the requesting party shows that delay shall result in irreparable harm.

(15) An attorney's fee in the amounts authorized by KRS 342.320 may be granted. The approved fee shall be deducted in equal amounts from the weekly income benefits awarded and shall be paid directly to the attorney. Any attorney fee awarded for interlocutory relief may result in a reduction of any attorney fee awarded at the conclusion of the claim.

Section 13. Benefit Review Conferences. (1) The purpose of BRC shall be to expedite the processing of the claim and narrow the contested issues.

(2) The BRC shall be an informal proceeding.

(3) The date, time, and place for the BRC shall be stated in the order issued by the commissioner scheduling the BRC and hearing.

(4) The plaintiff and his or her representative, the defendant or its representative, and the representatives of all other parties shall attend the BRC.

(5) If the defendant is insured or a qualified self-insured, a representative of the carrier, third party administrator, or qualified self-insured with settlement authority shall be present or available by telephone during the BRC.

(6) The ALJ may upon motion waive the plaintiff's attendance at the BRC for good cause shown.

(7) A transcript of the BRC shall not be made.

(8) Representatives of all parties shall have authority to resolve disputed issues and settle the claim at the BRC.

(9)(a) The plaintiff shall bring copies of additional known unpaid medical bills and documentation of out-of-pocket expenses including travel for medical treatments not previously disclosed. Failure to do so may constitute a waiver to claim payment for those bills or expenses absent a showing of good cause as to why the bills or out-of-pocket expenses could not be produced at or before the benefit review conference.

(b) Each defendant shall bring copies of disputed medical bills presented to them, their insurer or their representative known to be unpaid by them and any other disputed medical expenses including travel expenses, if not previously provided. Failure to do so may constitute a waiver of the right to challenge those bills or expenses.

(10) At or prior to the benefit review conference, the parties shall:

(a) Attempt to resolve controversies and disputed issues;

(b) Narrow and define disputed issues; and

(c) Provide written stipulations.

(11) A party seeking postponement of a BRC shall file a motion no later than forty-five (45) days after the issuance of the notice by the commissioner scheduling the BRC and hearing, and shall demonstrate good cause for the postponement.

(12) If, at the conclusion of the BRC, the parties have not reached agreement on all the issues, the ALJ shall prepare a final BRC memorandum and order including stipulations and identification of all issues which shall be signed by the parties or if represented, their counsel, and the ALJ.

(13) Only contested issues shall be the subject of further proceedings.

Section 14. Evidence - Rules Applicable. (1) The Rules of Evidence prescribed by the Kentucky Supreme Court shall apply in all proceedings before an ALJ except as provided by specific statute and this administrative regulation.

(2) Any party may file as evidence before the administrative law judge pertinent material and relevant portions of educational, Office of Vital Statistics, Armed Forces, Social Security, other public records, and limited hospital records to include emergency room records, history, physical and discharge summary, operative notes, and reports of specialized testing. An opinion of a physician which is expressed in these records shall not be considered by an administrative law judge unless specifically noticed by a party for consideration as medical opinion and as limited by KRS 342.033 and this administrative regulation. If the records or reports submitted exceed twenty (20) pages, the records or reports shall be paginated or Bates stamped consecutively and indexed with a table of contents generally identifying the contents of each page. If the records are filed by

plaintiff, an appropriate executed release shall be included to enable defendants to obtain complete copies of the records.

Section 15. Extensions of Proof Time. (1) An extension of time for producing evidence may be granted upon showing of circumstances preventing timely introduction, that reasonable effort was made by the party to obtain the evidence in a timely manner, and the significance of the evidence to the issues in the claim.

(2) A motion for extension of time shall be filed no later than fifteen (15) days prior to the expiration of proof time to be extended unless good cause is shown as to why it could not have been filed earlier.

(3) The motion for extension of time or affidavit shall set forth good cause.

(4) The granting of an extension of time for completion of discovery or proof shall:

(a) Enlarge the time to all:

1. Plaintiffs if the extension is granted to a defendant; or
2. Defendants if an extension is granted to a Plaintiff; and

3. Extend the time of the adverse party automatically unless the extension is for rebuttal proof;

(b) Be limited to the introduction of the evidence cited as the basis for the requested extension of time; and

(c) Be limited to one (1) extension of time for each party.

Section 16. Stipulation of Facts. (1) Refusal to stipulate facts which are not genuinely in issue shall warrant imposition of sanctions as established in Section 25 of this administrative regulation. An assertion that a party has not had sufficient opportunity to ascertain relevant facts shall not be considered good cause in the absence of due diligence.

(2) Upon good cause shown, a party may be relieved of a stipulation if the motion for relief is filed at least ten (10) days prior to the date of the hearing, or as soon as practicable after discovery that the stipulation was erroneous.

Section 17. Discovery and Depositions. (1) Discovery and the taking of depositions shall be in accordance with the provisions of Civil Rules 26 to 37, inclusive, except that:

(a) Civil Rules 27, 33, and 36 shall not apply to practice before the ALJs or the Workers' Compensation Board; and

(b) A Response to a Request for Production shall not be filed with the DWC.

(2) Depositions may be taken by telephone if the reporter administering the oath to the witness and reporting the deposition is physically present with the witness when the deposition is given. Notice of a telephonic deposition shall relate the following information:

(a) That the deposition is to be taken by telephone;

(b) The address and telephone number from which the call will be placed to the witness;

(c) The address and telephone number of the place where the witness will answer the deposition call; and

(d) Opposing parties may participate in the deposition either at the place where the deposition is being given, at the place the telephone call is placed to the witness, or by conference call. If a party elects to participate by conference call, that party shall contribute proportionate costs of the conference call.

(3) A party seeking a subpoena from an ALJ shall provide to the ALJ to whom the case is assigned, or if no assignment has been made, to the chief administrative law judge, a subpoena or subpoena duces tecum. This shall be done a minimum of ten (10) days prior to the date of the appearance being requested. A motion shall not be filed. A subpoena shall be served in accordance with Civil Rules 5.02, 45.03 or 45.05, whichever is applicable.

(4) The commissioner shall establish a medical qualifications index.

(a) An index number shall be assigned to a physician upon the filing of the physician's qualifications.

(b) Any physician who has been assigned an index number may offer the assigned number in lieu of stating qualifications.

(c) Qualifications shall be revised or updated by submitting revisions to the commissioner.

(d) A party may inquire further into the qualifications of a physi-

cian.

(e) If the physician's qualifications have not previously been filed into the index maintained by the commissioner, and an index number issued, the filing party shall provide sufficient information containing the physician's qualifications, and request the physician be included in the index and a number issued.

Section 18. Informal Conference. No less than fifteen (15) days prior to the date of the hearing, the ALJ may conduct an informal conference either at a hearing site, telephonically, or by other electronic means to inquire regarding remaining contested issues, and who shall testify at the hearing.

Section 19. Hearings. (1) At the hearing, the parties shall present proof concerning contested issues. If the plaintiff or plaintiff's counsel fails to appear, the administrative law judge may dismiss the case for want of prosecution, or if good cause is shown, the hearing may be continued.

(2) At the conclusion of the hearing, the ALJ may hold oral arguments, or order briefs submitted at his or her discretion. The claim shall be considered submitted immediately.

(3) Briefs shall not exceed fifteen (15) pages in length. Permission to increase the length of a brief shall be sought by motion. A reply brief shall not be filed unless specifically allowed by an ALJ.

(4) A decision shall be rendered no later than sixty (60) days following the hearing.

(5) The parties with approval of the ALJ may waive a final hearing. Waiver of a final hearing shall require agreement of all parties and the ALJ. A decision shall be rendered no later than sixty (60) days following the date of the order allowing the waiver of hearing.

(6) The time for filing a petition for reconsideration or notice of appeal shall not begin to run until after the date of filing of the written opinion.

(7) An opinion or other final order of an ALJ shall not be deemed filed until the ALJ notice of issuance is entered into LMS or if mailed by certificate of service from the Office of the ALJ or Department of Workers Claims to:

(a) An attorney who has entered an appearance for a party; or

(b) The party if an attorney has not entered an appearance.

(8) If the parties settle a claim prior to the hearing, the ALJ shall be notified as soon as practicable. If the parties fail to notify the ALJ of the need to cancel a hearing for any reason less than two (2) full business days before the date of the scheduled hearing, the parties shall pay their proportionate share of the court reporter appearance fee established by the commissioner, and, if applicable, the appearance fee for an interpreter obtained for the hearing by the DWC, also established by the commissioner.

Section 20. Petitions for Reconsideration. (1) If applicable, a party shall file a petition for reconsideration within fourteen (14) days of the date of filing of a final order or award of an administrative law judge, clearly stating the patent error which the petitioner seeks to have corrected and setting forth the authorities upon which petitioner relies.

(2) A response shall be served within ten (10) days after the date of filing of the petition.

(3) The ALJ shall act upon the petition within ten (10) days after the response is due.

Section 21. Agreements. (1) Unless the settlement agreement is completed and tendered to the ALJ for immediate approval at the BRC, informal conference, or hearing, the party drafting the settlement agreement shall provide the signed original to the adverse party no later than twenty-one (21) days after the date the parties agree to settle. The agreement shall be signed by all parties and tendered to the ALJ for approval no more than thirty (30) days after the date the parties agreed to settle.

(2) Once a settlement agreement has been approved by the ALJ, payment shall be made within twenty-one (21) days after the date of the order approving settlement.

(3) Failure to satisfy the time requirements in this section unless solely the fault of the claimant or claimant's counsel may result in the addition of eighteen (18) percent interest per annum on all benefits agreed upon in the settlement for any period of delay beyond the

time prescribed in subsection (2) of this section.

(4) Parties involved in a lump-sum settlement of future periodic payments shall use the discount factor computed in accordance with KRS 342.265(3).

(5) Parties who reach an agreement pursuant to KRS 342.265 shall file the agreement on the applicable form as listed in this subsection and the form shall reflect the original signature of the parties:

(a) Form 110-F, Agreement as to Compensation and Order Approving Settlement- Fatality; or

(b) Form 110, Agreement as to Compensation and Order Approving Settlement.

(6) A settlement agreement submitted for approval that contains information or agreements that are outside the provisions and purview of KRS Chapter 342 shall not be approved and shall be returned to the parties.

Section 22. Review of Administrative Law Judge Decisions. (1) General.

(a) Pursuant to KRS 342.285(1), decisions of administrative law judges shall be subject to review by the Workers' Compensation Board in accordance with the procedures set out in this administrative regulation.

(b) Parties shall insert the language "Appeals Branch" or "Workers' Compensation Board" on the outside of an envelope containing documents filed in an appeal to the board for any documents or pleadings physically filed.

(2) Time and format of notice of appeal.

(a) Within thirty (30) days of the date a final award, order, or decision rendered by an administrative law judge pursuant to KRS 342.275(2) is filed, any party aggrieved by the award, order, or decision may electronically file a notice of appeal to the board, with service upon all other parties pursuant to Section 3 of this administrative regulation.

(b) As used in this section, a final award, order, or decision shall be determined in accordance with Civil Rule 54.02(1) and (2).

(c) The notice of appeal shall:

1. Denote the appealing party as the petitioner;

2. Denote all parties against whom the appeal is taken as respondents;

3. Name the ALJ who rendered the award, order, or decision appealed from as a respondent;

4. If appropriate pursuant to KRS 342.120 or 342.1242, name the director of the Division of Workers' Compensation Funds as a respondent;

5. Include the claim number; and

6. State the date of the final award, order, or decision appealed.

(d) Cross-appeal.

1. Any party may file a cross-appeal through notice of cross-appeal filed within ten (10) days after the notice of appeal is served.

2. A cross-appeal shall designate the parties as stated in the notice of appeal.

(e) Failure to file the notice within the time allowed shall require dismissal of the appeal.

(f) The commissioner shall issue an acknowledgement to all parties of the filing of a notice of appeal or cross-appeal.

(3) Format of petitioner's brief.

(a) The petitioner's brief shall be filed within thirty (30) days of the filing of the notice of appeal.

(b) The petitioner's brief shall be filed with the commissioner of the DWC.

(c) The petitioner's brief shall conform in all respects to Civil Rule 7.02(4).

(4) Petitioner's brief. The petitioner's brief shall designate the parties as petitioner (or petitioners) and respondent (or respondents) and shall be drafted in the manner established in this subsection.

(a)1. The name of each petitioner and each respondent shall be included in the brief.

2. The petitioner shall specifically designate as respondents all adverse parties.

3. The administrative law judge who rendered the award, order, or decision appealed from shall be named as a respondent.

(b) The workers' compensation claim number, or numbers, shall be set forth in all pleadings before the Workers' Compensation Board.

(c) The petitioner's brief shall state the date of entry of the final award, order, or decision by the administrative law judge.

(d) The petitioner's brief shall state whether any matters remain in litigation between the parties in any forum or court other than those for which an appeal is being sought.

(e) The petitioner's brief shall include a statement of the "Need for Oral Argument" designating whether the party requests an argument to be heard orally before the board and, if so, a brief statement setting out the reason or reasons for the request.

(f) The petitioner's brief shall include a "Statement of Benefits Pending Review" which shall set forth whether the benefits designated to be paid by the award, order, or decision for which review is being sought have been instituted pursuant to KRS 342.300.

(g) The organization and contents of the petitioner's brief for review shall be as established in this paragraph.

1. A brief "Introduction" shall indicate the nature of the case.

2. A "Statement of Points and Authorities" shall set forth, succinctly and in the order in which they are discussed in the body of the argument, the petitioner's contentions with respect to each issue of law on which he or she relies for a reversal, listing under each the authority cited on that point and the respective pages of the brief on which the argument appears and on which the authorities are cited. This requirement may be eliminated for briefs of five (5) or less pages.

3. A "Statement of the Case" shall consist of a chronological summary of the facts and procedural events necessary to an understanding of the issues presented by the appeal, with ample reference to the specific pages of the record supporting each of the statements narrated in the summary.

4. An "Argument" shall:

a. Conform with the statement of points and authorities, with ample supportive references to the record and citations of authority pertinent to each issue of law; and

b. Contain, at the beginning of the argument, a statement with reference to the record showing whether the issue was properly preserved for review and, if so, in what manner.

5. A "Conclusion" shall set forth the specific relief sought from the board.

6. An "Appendix" shall contain:

a. Copies of cases cited from federal courts and foreign jurisdictions, if any, upon which reliance is made; and

b. Copies of prior board opinions in accordance with subsection (10) of this section.

7. Civil Rule 76.28(4)(c) shall govern the use of unpublished opinions of the Court of Appeals or Supreme Court.

(5) Respondent's brief, combined brief, or cross-petitioner's brief.

(a) Each respondent shall file an original brief, combined brief if cross-petition or cross-petitioner's brief with service upon the other parties against whom the claim is being appealed, within thirty (30) days of the date on which the petitioner's brief was filed with the commissioner of the DWC.

(b) The respondent's brief shall include a statement of the "Need for Oral Argument" similar to the statement required of the petitioner by subsection (4)(e) of this section.

(c) The respondent's brief shall include a "Statement of Benefits Pending Review" similar to the statement required of the petitioner by subsection (4)(f) of this section.

(d) Respondent's counter-argument shall follow the organization and content of the petitioner's brief as set forth in subsection (4)(g) of this section.

(6) Reply brief.

(a) If applicable, the petitioner may file a reply brief within ten (10) days after the date on which the respondent's brief was served or due, whichever is earlier.

(b) The organization and contents of the reply brief shall be as provided in Civil Rule 76.12(4)(e), except that an index or contents page shall not be required.

(c) If a cross-appeal has been filed, the cross-petitioner's reply brief may be served within ten (10) days after the date on which the last cross-respondent's brief was served or due, whichever is earlier.

(7) Certification. The petitioner's brief, respondent's brief, and reply brief shall be electronically signed by each party or the party's counsel and that signature shall constitute a certification that the

statements contained in the document are true and made in good faith. If the brief is not filed through LMS, it shall bear an original signature of each party or counsel with a written certification the statements contained in the document are true and made in good faith. The filer of the brief shall certify that service has been made upon opposing parties with identification of the manner of service.

(8) Service of notice of appeal, cross-appeal, petitioner's brief, respondent's brief, and reply briefs on adverse parties.

(a) Before filing a notice of appeal, cross-appeal, or any brief with the commissioner of the DWC, a party shall serve, in the manner provided by Civil Rule 5.02(2) or electronically as set forth in this administrative regulation, a copy of the document on each adverse party.

(b) Every brief filed in an appeal to the board shall bear, on the front cover, an original signature or if filed through LMS an electronically signed statement, in accordance with Civil Rule 5.03 by the attorney or party that service has been made as required by paragraph (a) of this subsection. The statement shall identify by name each person served.

(c) The name of each attorney submitting a document to the board shall include a current address, telephone number, and e-mail address following its "conclusion".

(d) If the respondent is also a cross-petitioner, the respondent may file a combined brief or separate cross-petitioner's brief which shall address issues raised by the cross-appeal.

(e) If a separate cross-petitioner's brief is filed, the format shall be the same as a respondent's brief.

(9) Any motion for extension of time to file a brief shall be filed not later than five (5) days prior to the date the brief is due.

(10) Form of citations.

(a) All citations of Kentucky statutes and reported decisions of the Court of Appeals and Supreme Court shall conform to the requirements of Civil Rule 76.12(4)(g).

(b) All citations of Kentucky unpublished decisions shall conform to the requirements of Civil Rule 76.28(4)(c).

(c) Citations for prior decisions of the board shall include the style of the case, the appropriate claim or case number, and the date the decision was rendered.

(11) Number of pages.

(a) The petitioner's brief and the respondent's brief shall be limited to twenty (20) pages, in totality, inclusive of those items required by this section. The appendix shall not count against the page limit.

(b) Reply briefs shall be limited to five (5) pages.

(c) Combined briefs shall be limited to twenty-five (25) pages in totality, inclusive of those items required by this section. The appendix shall not count against the page limit.

(d) Permission to increase the length of a brief shall be sought by motion, but shall only be granted upon a showing of good cause.

(12) Sanctions. Failure of a party to file a brief conforming to the requirements of this administrative regulation, failure of a party to timely file a response, or failure to obtain prior permission to increase the length of a brief may be grounds for the imposition of one (1) or more of the following sanctions:

(a) Affirmation or reversal of the final order;

(b) Rejection of a brief that does not conform as to organization, content, or length with leave to refile in proper form;

(c) Striking of an untimely response;

(d) A fine of not more than \$500; or

(e) Dismissal.

(13) Motions.

(a) The original of a motion or pleading shall be filed, in accordance with Section 4 of this administrative regulation, with the commissioner of the DWC, and shall bear the designation of Appeals Branch, or Workers' Compensation Board.

(b) The style of the case, including the claim number and title of the motion or pleading, shall appear on the first page of the motion or pleading.

(c) The party filing a motion may file a brief memorandum supporting the motion and opposing parties may file brief memoranda in response. To be considered, a response shall be filed within ten (10) days of the motion. Further responses shall not be filed.

(d) Every motion and response, the grounds of which depend upon the existence of facts not in evidence, shall be supported by affidavits demonstrating those facts.

(e) Every motion and response, the grounds of which depend upon the existence of facts which the moving or responding party believes are shown in the evidence or are admitted by the pleadings, shall make reference to the place in the record where that evidence or admission is found.

(f) Motions or pleadings shall be filed in accordance with Sections 4, 5, or 6 of this administrative regulation.

(g) A motion to extend the time in which to file a brief or other pleading in an appeal shall be filed at least five (5) days prior to the date sought to be extended.

(h) The filing of a motion to dismiss an appeal shall stay the remaining time for the filing of a responsive pleading. If the petitioner's brief has been previously filed and a motion to dismiss has been overruled, the respondent shall have fifteen (15) days from the order to file a respondent's brief.

(i) Except for motions that call for final disposition of an appeal, any board member designated by the chairman may dispose of a motion. An intermediate order may be issued on the signature of any board member.

(14) Oral arguments.

(a) Upon motion of a party or in its own discretion, the board may order an oral argument on the merits in a case appealed from a decision, award, or order of an ALJ.

(b) Oral arguments shall occur on a date and at a time and location specified by the board.

(c) Appeals designated for oral argument shall be held in abeyance and all subsequent appeal time in the case shall be calculated from the date of the oral argument.

(15) Continuation of benefits pending appeal.

(a) Benefits awarded by an administrative law judge which are not contested shall be paid during the pendency of an appeal. A motion requesting the payment of these benefits shall not be required. Uncontested benefits shall include income benefits at an amount lesser than what was awarded if the issue on appeal addresses the amount of benefits to be awarded as opposed to the entitlement to income benefits.

(b) Upon the motion of a party pursuant to KRS 342.300, the board may order payment of benefits pending appeal in conformity with the award, decision, or order appealed from.

(c) Entitlement to relief pursuant to KRS 342.300 shall be granted upon motion establishing that:

1. The probability of the existence in fact of:

a. Financial loss;

b. Privation, suffering, or adversity resulting from insufficient income; or

c. Detriment to the moving party's property or health if payment of benefits is not instituted; and

2. There exists a reasonable likelihood that the moving party shall prevail on appeal.

(d) Any response to a motion for continuation of an award pending appeal shall be served within ten (10) days from the date of the request and, thereafter, the request shall be ripe for a decision.

(e) Entitlement to relief by the moving party and responses shall be shown by:

1. Affidavit if the grounds for the motion or response depend upon the existence of facts not in evidence; or

2. Supporting memorandum citing to evidence existing within the record and making reference to the place in the record where that evidence is found.

(16) Decisions.

(a) The board shall:

1. Enter its decision affirming, modifying, or setting aside the order appealed from; or

2. Remand the claim to an administrative law judge for further proceedings.

(b) Motions for reconsideration shall not be permitted.

(c) The decision of the administrative law judge shall be affirmed if:

1. A board member is unable to sit on a decision; and

2. The remaining two (2) board members cannot reach an agreement on a final disposition.

(17) Appeal from board decisions. If applicable, pursuant to KRS 342.290, the decision of the board shall be appealed to the Kentucky Court of Appeals as provided in Civil Rule 76.25.

(18) If the parties agree to settle a claim while it is on appeal to the board, the original agreement, along with a motion to place the appeal in abeyance and to remand to the ALJ shall be filed. Action shall not be taken by an ALJ until an order is issued by the board holding the appeal in abeyance, and remanding the claim to the ALJ for approval of the settlement agreement. Once the settlement agreement is approved, the appeal shall be removed from abeyance and dismissed if all issues on appeal have been resolved.

Section 23. Coverage - Insured Status. Upon the filing of an application for resolution of claim, the commissioner shall ascertain whether the employer or any other person against whom a claim is filed and who is not exempted by KRS 342.650 has secured payment of compensation by obtaining insurance coverage or qualifying as a self-insurer pursuant to KRS 342.340. If an employer does not have insurance coverage or qualify as a self-insurer, the commissioner shall notify the ALJ and all parties by service of a certification of no coverage.

Section 24. Withdrawal of Records. (1) A portion of any original record of the DWC shall not be withdrawn except upon an order of the commissioner or an ALJ.

(2)(a) All physical exhibits, including x-rays, shall be disposed of sixty (60) days after the order resolving the claim has become final.

(b) A party filing an exhibit may make arrangements to claim an exhibit prior to that time.

(c)1. If an unclaimed exhibit has no money value, it shall be destroyed.

2. If an unclaimed exhibit has a value of more than \$100, it shall be sold as surplus property.

3. If an unclaimed exhibit has a value of less than \$100, it shall be donated to the appropriate state agency.

4. If an unclaimed exhibit has historic value, it shall be sent to the state archives.

Section 25. Time for Payment of Benefits in Litigated claims. (1) If a disputed claim is litigated and an opinion, order, or award is entered awarding benefits to a claimant and no appeal is taken that prevents finality of the opinion, order, or award:

(a) All past benefits due under the award with appropriate interest shall be paid no later than twenty-one (21) days after expiration of the last appeal date; and

(b) Any attorney fee shall be paid no later than thirty (30) days after the date of the administrative law judge's order approving the fee.

(2) If an appeal is taken from an opinion, order, or award awarding benefits to a claimant, any benefits shall be paid no later than twenty-one (21) days after the decision becomes final and no further appeal can be taken. Any attorney fee shall be paid no later than thirty (30) days after the decision becomes final, or the date of the ALJ's order approving the fee, whichever is later.

Section 26. Sanctions. (1) Pursuant to KRS 342.310, an ALJ or the board may assess costs upon a determination that the proceedings have been brought, prosecuted, or defended without reasonable grounds.

(2) A sanction may be assessed against an offending attorney or representative rather than against the party.

(3) If a party is a governmental agency and attorney's fees are assessed, the fees shall include fees for the services of an attorney in public employment, measured by the reasonable cost of similar services had a private attorney been retained.

(4) Failure of a party to timely file a pleading or document or failure to comply with the procedures required by this administrative regulation may be treated by an administrative law judge or the board as prosecuting or defending without reasonable grounds.

Section 27. Payment of Compensation from Uninsured Employers' Fund. (1) Payment from the Uninsured Employers' Fund of compensation shall be made upon the determination by an ALJ that the responsible employer failed to secure payment of compensation as provided by KRS 342.340; and

(a) Thirty (30) days have expired since the finality of an award or issuance of an interlocutory relief order and a party in interest certi-

fies the responsible employer has failed to initiate payments in accordance with that award;

(b) Upon showing that the responsible employer has filed a petition under any section of the Federal Bankruptcy Code; or

(c) The plaintiff or any other party in interest has filed in the circuit court of the county where the injury occurred an action pursuant to KRS 342.305 to enforce payment of the award against the uninsured employer, and there has been default in payment of the judgment by the employer.

(2) The plaintiff may by motion and affidavit demonstrate compliance with this section and request an administrative law judge to order payment from the Uninsured Employers' Fund in accordance with KRS 342.760.

(3) This section shall not be construed to prohibit the voluntary payment of compensation by an employer, or any other person liable for the payment, who has failed to secure payment of compensation as provided by KRS Chapter 342, the compromise and settlement of a claim, or the payment of benefits by the Workers' Compensation Funds or Coal Workers' Pneumoconiosis Fund.

Section 28. Forms. The DWC shall not accept applications or forms in use prior to the forms required by and incorporated by reference in this administrative regulation. Outdated applications or forms submitted shall not be filed and shall be returned to the applicant or person submitting the form.

Section 29. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form 106, "Medical Waiver and Consent", January 1, 2016;

(b) Form 109, "Attorney Fee Election", January 1, 2016;

(c) Form 110, "Agreement as to Compensation and Order Approving Settlement", January 1, 2016;

(d) Form 110-F, "Agreement as to Compensation and Order Approving Settlement – Fatality", January 1, 2016;

(e) Form 115, "Social Security Release form", January 1, 2016;

(f) Form F, "Fatality", January 1, 2016;

(g) Form AAW-1, "Average Weekly Wage Certification", January 1, 2016;

(h) Form AWW-CON, "Average Weekly Wage Certification-Concurrent", January 1, 2016;

(i) Form AWW-POST, "Average Weekly Wage Certification-Post Injury", January 1, 2016;

(j) Form SVC, "Safety Violation Alleged by Plaintiff/Employee", January 1, 2016; and

(k) Form SVE, "Safety Violation Alleged by Defendant/Employer", January 1, 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DWIGHT T. LOVAN, Commissioner

APPROVED BY AGENCY: June 15, 2015

FILED WITH LRC: June 15, 2015 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, July 28, 2015, at 1:30 p.m. (EDT) at the offices of the Department of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard shall be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing shall not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Friday, July 31, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Charles E. Lowther, General Counsel, Department of Worker's Claims, Prevention Park, 657 Chamberlin

Avenue, Frankfort, Kentucky 40601, phone (502) 782-4464, fax (502) 564-0681.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Charles E. Lowther

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure for the adjustment and practice of claims for workers' compensation using the newly established Litigation Management System (LMS).

(b) The necessity of this administrative regulation: Pursuant to KRS 342.260(1) and KRS 342.285(1), the commissioner is required to promulgate administrative regulations necessary to carry on the work of the administrative law judges and the Workers' Compensation Board. The new administrative regulation establishes the procedures utilizing the electronic filing, or LMS. It replaces 803 KAR 25:010, which is being repealed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes an orderly procedure for the Department of Workers' Claims' administrative law judges and the Workers' Compensation Board to carry on the adjudication of workers' compensation claims and appeals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation is necessary for the orderly and prompt resolution and adjudication of workers' compensation claims and appeals. All parties to a workers' compensation claim should be afforded a process and procedure for prompt, orderly and fair resolution and adjudication. The Litigation Management System will allow for the prompt filing of legal documents without the filing of paper.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amended administrative regulation affects all injured workers, those afflicted with an occupational disease, and employers, including governmental entities subject to the Workers' Compensation Act, all physicians and medical providers providing services to injured workers, workers with occupational diseases, insurance carriers, self-insured employers, self-insured groups, third-party administrators, and their attorneys.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Those regulated entities identified in question (3) will have to familiarize themselves with the amended procedure and resolve or adjudicate workers' compensation claims in accordance with the administrative regulation. This includes the usage of computers for electronic filing of documents required by the Litigation Management System.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amended administrative regulation will be available for no additional cost through the web site of the Legislative Research Commission. Thus, there should be no additional cost for access to the administrative regulation. It is anticipated that increased adjudicatory efficiencies will reduce overall litigation costs for the identified entities, as there will be a drastic reduction in paper usage and postage expenses.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The identified entities will receive prompt, fair and orderly resolution and adjudication of workers'

compensation claims and disputes, which should be faster due to the electronic filing of documents.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional costs

(b) On a continuing basis: No continuing costs

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Workers' Claims normal operating budget is the source of funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will be no increase in fees or funding to implement this amended administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amended administrative regulation does not establish or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because the amended procedure applies equally to all parties.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All parts of government with employees subject to KRS Chapter 342 are impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 342.260(1) and KRS 342.285(1)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. As an employer, there may be some minimal initial increased costs for implementation; however, it is anticipated that costs subsequently will be lowered.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is expected to be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is expected to be generated.

(c) How much will it cost to administer this program for the first year? No new administration costs are expected.

(d) How much will it cost to administer this program for subsequent years? No new administration costs are expected.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: